

## FARMING AND LOCAL ZONING

(updated 10/2015)

Section 4413(d) of Title 24 (Municipal and County Government) of Vermont Statutes Annotated (V.S.A.) places limitations on municipal bylaws and prohibits the regulation of required agricultural practices, including the construction of farm structures, through municipal zoning. The Agency may be requested, either by the town or the farmer, to provide an opinion on whether the farmer is engaged in “farming” and if a proposed structure is a “farm structure” in order to determine whether the Vermont Agency of Agriculture, Food & Markets (Agency) regulates the agricultural practice, and the applicability of local zoning requirements. That opinion is based on a written submission to the Agency that provides information regarding the current or proposed operation. This document is designed to help you develop that written submission to request an Agency opinion.

The information contained in this document will help you to determine:

- ▶ Are you engaged in farming and required agricultural practices? (Step 1)
- ▶ Is the structure you are proposing to build a farm structure? (Step 2)
- ▶ How do you request an alternative setback from the Secretary when your proposed farm structure cannot meet local setbacks? (Step 5).
- ▶ What do you need to do if you are proposing to construct a farm structure in a designated flood hazard area or river corridor? (Step 8)

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Everyone engaged in farming is required to follow the land use and water quality regulations contained in the [Required Agricultural Practices Regulations](#) (RAPs).

**NOTE:** If the property on which you propose to construct a farm structure is currently covered under an Act 250 permit, you will need to contact your local [Act 250 District Commission](#) and seek a Jurisdictional Opinion on whether written permission from the Commission is required before the proposed work or any change in land use can move forward.

**NOTE:** The Department of Environmental Conservation regulates construction of a farm structure in a mapped flood hazard area or river corridors. Prior to submitting any information to the Agency please check with your Town Clerk or Zoning Administrator, or your State of Vermont [regional flood plain manager](#) to determine if your proposed structure is located in one of these areas. [See Step 8].

**NOTE:** Constructing a farm structure in or near a wetland? Please contact the Vermont Department of Environmental Conservation, Wetlands Program, at 802-490-6179, to determine if the [Vermont Wetland Rule](#) restrictions will apply to your project.

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**Step 1. Is Your Operation a Farm?** To qualify for the exemption from local zoning or to build a farm structure without following local zoning setbacks, you must first demonstrate that your operation is a “farm” as defined by Section 2.05 of the RAPs and that you are engaged in required agricultural practices as defined in Section 3.2 of the RAPs. Your submission should provide information on how your operation meets the definition of “farming” and “required agricultural practices”.

**Section 2.05 of the RAPs states that:**

**“Farming means:**

- (a) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or
- (b) the raising, feeding or management of livestock, poultry, fish or bees; or
- (c) the operation of greenhouses; or
- (d) the production of maple syrup; or
- (e) the on-site storage, preparation and sale of agricultural products ***principally produced*** on the farm (emphasis added); or,
- (f) the on-site production of fuel or power from agricultural products or wastes produced on the farm; or
- (g) the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines.”

**Please note: “Principally produced”** means that more than 50% by weight or volume of the agricultural products, which result from the activities stated in (a) through (g) above, and which are stored, prepared or sold at the farm, are grown or produced on the farm.

**Section 3.2 of the RAPs states**

**“Agricultural practices that are governed by these regulations include, but are not limited to, the following:**

- (a) The confinement, feeding, fencing, and watering of livestock.
- (b) The storage and handling of livestock wastes and by-products.

- (c) The collection of maple sap and production of maple syrup.
- (d) The preparation, tilling, fertilization, planting, protection, irrigation and harvesting of crops.
- (e) The ditching and subsurface drainage of farm fields and the construction of farm ponds.
- (f) The stabilization of farm field streambanks.
- (g) The construction and maintenance of farm structures and farm roads.
- (h) The on-site production of fuel or power from agricultural products or wastes produced on the farm.
- (i) The on-site storage, preparation and sale of agricultural products principally produced on the farm.
- (j) The on-site storage of agricultural inputs including, but not limited to, lime, fertilizer and pesticides.
- (k) The handling of livestock mortalities.

**Step 2. Are you proposing to build a “Farm Structure”?** Alternative setback requests, i.e. a setback different from the local setback requirements, are only entertained for the construction of farm structures, which are only buildings the Agency has regulatory jurisdiction over. Once you have demonstrated that your operation is a “farm” and you are engaged in “required agricultural practices”, you must then provide information regarding the proposed structure to demonstrate how that structure meets the definition of a “farm structure”.

First, determine if your proposed structure meets the definition of “Structure” in the RAPs. **Section 2.18 of the RAPs states: “Structure means a silo, a building for housing livestock, raising horticultural or agronomic plants, or for carrying out other accepted agricultural practices as defined in Section 3.2 of these rules. It also means a barnyard or waste management system, either of which is created from an assembly of materials, but excludes a dwelling for human habitation.”**

**NOTE:** Vehicles, tractor trailers, or shipping containers do not meet the Agency’s definition of “structure.” Dual use of a building disqualifies a building as meeting the Agency definition of a “farm structure.” If you intend to grow your business and store, process, sell, or prepare agricultural products not *principally produced on the farm*, please consult an attorney and/or the local administrative officer to understand permitting requirements for district in which your property is located.

If your proposed structure meets the RAP definition of “Structure”, it must then meet the RAP definition of “Farm Structure”.

**Section 2.06 of the RAPs states:**

**Farm Structure means a structure or structures as defined herein that is used by a person for agricultural production that meets one or more of the following:**

- (a) is used in connection with the sale of \$1000 or more of agricultural products in a normal year; or
- (b) is used in connection with the raising, feeding, and management of at least the following number of adult animals: four equines; five cattle or American bison; fifteen swine; fifteen goats; fifteen sheep; fifteen fallow deer; fifteen red deer; fifty turkeys; fifty geese; one-hundred laying hens; two-hundred and fifty broilers, pheasant, Chukar partridge, or Coturnix quail; three camelids; four ratites (ostriches, rheas, and emus); thirty rabbits; one hundred ducks; or one-thousand pounds of cultured trout; or
- (c) is used by a farmer filing with the Internal Revenue Service a 1040 (F) income tax statement in at least one of the past two years; or
- (d) is on a farm with a business and farm management plan approved by the Secretary.

**NOTE:** If there is a proposal to build a farm structure, the applicant must notify the municipality of the intent to do so. Notifying the administrative officer or clerk in the town at this point will help you identify whether you meet the local setback (Steps 3-7), whether construction is proposed in a flood hazard area or river corridor (Set 8).

**Step 3. Can You Meet Local Setbacks When Constructing your Farm Structure?** Although Vermont law exempts “farm structures” from municipal regulation under zoning and any local requirement to obtain a building permit, the Secretary, as a matter of policy, has determined that the setbacks established in the municipal zoning ordinance of the town in which the structure will be built shall be the setbacks adopted and approved by the Secretary pursuant to 24 V.S.A. §4413(d) and section 4.07 of the RAPs. A person proposing to build a farm structure that will meet the local setbacks only needs to notify the municipality of the intent to build. [Vermont law requires any person proposing to build a farm structure to notify the municipality prior to commencing construction. [See 24 V.S.A. §4413(d) and RAP Section 4.07(c)]. There is no need to notify the Secretary of the intent to build a farm structure as long as it will meet the local setback requirements.

**Step 4. If You Cannot Meet Local Setbacks and still want to build, you Must Request an Alternative Setback from the Secretary of Agriculture.** If a farmer believes that the proposed farm structure cannot meet the local ordinance setbacks due to site-specific limitations or hardship, the Secretary will entertain a request for an alternative setback from the local setback requirements. If you demonstrate satisfactorily that other setback distances are reasonable under the specific facts and circumstances of your case, the Secretary may approve alternative setbacks for the proposed farm structure. These requests may be denied if the Secretary does not believe the alternative setbacks are reasonable or if the location of the proposed structure would violate other state or federal laws.

If, however, the person wishes to use less restrictive setbacks, he or she must make a request in writing to the Secretary.

**NOTE:** The Secretary does not have the authority to permit construction of farm structures, placement of fences or any work within a highway right-of-way (ROW). This approval must be granted by the Town. You must show the highway ROW and the setback in any proposal to construction a farm structure. Please check with your Town to ensure you know exactly where the ROW is located.

**Step 5. How to Request an Alternative Setback from the Secretary.** A request for an alternative setback must be made in writing and contain all of the following information:

1. A description of the farming operation. (See Step 1 above.)
2. A detailed explanation of your operation and how the proposed building meets the definition of a “farm structure”. (See step 2 above.)
3. A statement of the reason(s) less restrictive setbacks are necessary. (See Step 4 above.)
4. A copy of the zoning ordinance governing the tract on which the structure will be built showing the setback requirements or a letter from the municipality with the required set back information.
5. The name and contact information (email address and phone #) for the Town’s Zoning Administrator or Town Clerk.
6. A plan of the proposed structure(s) showing the distance from all property lines and the highway ROW, and centerline of the highway if setbacks are measured from this line.

7. A description of each adjoining land use. You may also include letter(s) from adjoining landowners where applicable.

8. Contact information where you can be reached for additional information or clarification. Please provide the physical location of the parcel in question if different from the mailing address.

Incomplete requests may be returned and will slow down how quickly the Secretary can render a final determination on the request.

**Step 6. If the Secretary Intends to Consider the Alternative Setback Request:**

The Secretary will notify the municipality in writing by certified mail of his or her intent to consider the request. The Secretary will request that the notice be posted in a public place in the municipal office. Any comments resulting from this posting or from the municipality must be received in writing at the Agency by 4:30 p.m. on the seventh (7<sup>th</sup>) business day following receipt of the notice.

Comments should be sent to:

Vermont Agency of Agriculture, Food and Markets  
116 State Street  
Montpelier, Vermont 05620-2901  
Attention: Stephanie Ann Smith

TELEPHONE: (802) 828-2430

**Step 7. The Secretary Approves or Denies the Alternative Setback Request:**

The Secretary will notify the farmer applicant in writing of his or her decision to grant or deny the request and will send a copy of the decision to the municipality. This copy may be electronic.

**Step 8. The Construction of Farm Structures in Designated Flood Hazard Areas or River Corridors**

The Agency of Agriculture will refer requests to construct a “farm structure” in a Flood Hazard Area or a River Corridor to the regional flood plain manager at the Vermont River Corridor & Floodplain Protection Program.

1. Prior to the Agency of Agriculture referring to the Vermont River Corridor & Floodplain Protection Program (Program), the Agency makes a

- determination of whether a structure meets the definition of a “farm structure” as provided in the RAPs.
2. The Program officials will apply the [Flood Hazard Area & River Corridor Rules](#) to development within the regulated areas and determine its regulatory jurisdiction,
    - a. Individual Permit:  
[http://watershedmanagement.vt.gov/rivers/docs/FPRC\\_IP\\_app.pdf](http://watershedmanagement.vt.gov/rivers/docs/FPRC_IP_app.pdf)
    - b. General Permit Activities – without/with application:  
[http://watershedmanagement.vt.gov/rivers/docs/FHARC\\_reporting\\_notice.pdf](http://watershedmanagement.vt.gov/rivers/docs/FHARC_reporting_notice.pdf)
    - c. Reporting Application  
[http://watershedmanagement.vt.gov/rivers/docs/FHARC\\_reporting\\_application.pdf](http://watershedmanagement.vt.gov/rivers/docs/FHARC_reporting_application.pdf)
  3. Prior to construction, the zoning administrator or town clerk must be notified in writing of the proposed construction activity. The notification must contain a sketch of the proposed structure including setbacks from property lines and road rights of way.

**NOTE:** Fences through which flood waters may flow are generally exempt from Flood Hazard Area requirements, bridges or culverts are generally not.

Please send all requests for a determination of whether you are constructing a farm structure to:

Vermont Agency of Agriculture, Food and Markets  
116 State St.  
Montpelier, VT 05620-2901  
Attn: Stephanie Ann Smith